*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

<+ WRIT PETITION NO. 7149 OF 2004 AND BATCH

% 28-10-2004

The New India Assurance Co.Ltd.

Through its Branch Manager, D.No.2-11-90/2

1st floor, Opp.IOB Weekly, Market Road,

Kamareddy, Nizamabad District.

...Petitioner.

Versus

$ 1. The Commissioner for Workmen' Compensation and Asst. Commissioner for Labour at Nizamabad.

2. Anis Hahamed, s/o Akbar Ahmed r/o Penjal Base, Budhan(M) Nizamabad District.

3. B.Narsinga Rao s/o Rama Rao r/o Main Road, Banswada, Nizamabad District.

...Respondents.

! Counsel for the Petitioner: Mr. T.Ramulu

^ Counsel for the Respondent No.1: G.P. for Labour

< Gist:

> Head Note:

? <u>Cases referred</u>:

1. 2003(5) ALD 162
2. AIR 1957 SC 882
3. 1975(1) APLJ 258
4. 1997(1) ALT 299
5. AIR 1965 SC 1595
6. 2004(3) SCC 694
7. 1996 ACJ 1044 (SC)
8. 2003(4) ALD 183 (DB)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHT DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION Nos. 7149, 7934, 7937, 7938, 7939, 7940, 7941, 7942, 7943, 7945, 7946, 7947, 7948, 7949, 7950, 7951, 7952, 7953 and 7954 of 2004

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WRIT PETITION NO : 7149 of 2004

Between:

The New India Assurance Co.,Ltd.,

Through its Branch Manager, D.No.2-11-90/1,

1st Floor, Opp.IOB Weekly, Market Road, Kamareddy,

Nizamabad District.

..... PETITIONER

AND

1. The Commissioner for Workmen' Compensation and Asst.

Commissioner for labour at Nizamabad.
2. Anis Hahamed, S/o. Akbar Ahmed,
   R/o.Penjal Base, Budhan (M), Nizamabad District.
3. B.Narsinga Rao, S/o. Rama Rao,
   R/o.Main Road, Banswada, Nizamabad District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari calling for records relating to the order dated 23-10-2003, dismissing the I.A.No.86/2003 in W.C.No.142/2003, on the file of the Commissioner for Workmen's Compensation and Asst. Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Government Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of Workmen's compensation Act and quash the

same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondents 2 and 3: None appeared

WRIT PETITION NO : 7934 of 2004

Between:

The New India Assurance Co. Ltd.

Through Its Br. Manaqger, D.No. 2-11-90/1,
1st Floor Opp. I.O.B. Weekly, Market Road,

Kamareddy, Nizamabad.

..... PETITIONER

AND

1.The Commissioner for Workmen's

Compensation & Asst. Commissioner of Labour, Nizamabad.
2. Kondralla Sampath, S/o. Dammaiah, bearing No. AP No.AP

25 T 6879 R/o. Rampur (V) Maldoor (M), Nizamabad District.
3. Shaik Abdul Rahman, S/o. Hyder Saab,
Bearing No. AP 25 T 6879, R/o. H.No. 7-11-23/5, Khoja

Colony, Nizamabad Town.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A. No. 67/2003 in W.C. No. 164/2002NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent h8erein to the Medical Board, Govt Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of Workmen's compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2 : Smt.K.S.Mahender Reddy

Counsel for the Respondent No. 3 : None appeared

WRIT PETITION NO : 7937 of 2004

Between:

The New India Assurance Co. Ltd.,

Through Its Br. Manager. D.No.2-11-90/1,
1st Floor, Opp: I.O.B. Weekly Market Road, Kamareddy,
Nizamabad.

..... PETITIONER

AND

1.The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. Deemari Nallanna, S/o. Poshetty,
R/o. Chilkli (v), Maldoor (M), Nizamabad District.
3. Mohd. Abdul Waisay, S/o. Mohd. Abdul Lateef,
R/o. H.No.9-20-62, Malapally, Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.No.72/2003 in W.C.No.192/2003 NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt. Civil Hospital at

Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under provisions of Workmen's Compensation Act and quash the same as illegal and arbitrary

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the respondents 2: Smt. K.S.Mahender Reddy

Counsel for the respondent No.3: None appeared

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WRIT PETITION NO : 7938 of 2004

Between:

The New india Assurance Co. Ltd.,

through its Br. Manager, D. NO. 2-11-90/1,
1st Floor, Opp IOB, Weekly Market Road,

Kamaredddy, Nizamabad

..... PETITIONER

AND

1. The Commissioner for Workmen’s

Compensation & Asst. Commissioner of Labour Nizamabad
2. Sindhe Vittoba S/o sayyaji Lorry No AP 27T6879,

R/o Rampur Vilage Malkoor (M) Nizamabad District
3. Shaik Abdul Rahman, S/o Hyder Saab,

Major Owner of Lorry bearing No. AP 25 T 6879
R/o H. No. 7-11-23/5 Khoja Colony, Nizamabad Town

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003 dismissing the I.A. No. 66/2003 in W.C. No. 163/2002NF on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt Civil Hospital at Nizamabad, during at he enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation act and quash the same as illegal and arbitrary

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.: GP FOR LABOUR

Counsel for the respondent No.2: Smt.K.S.Mahender Reddy

Counsel for the respondent No.3: None appeared

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WRIT PETITION NO : 7939 of 2004

Between:

The New India Assurance Co.ltd.,

through its Br.Manager, D.No.2-11-90/1,
1st Floor, Opp:I.O.B., Weekly, Market Road, kamareddy,
Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmens'

Compensation & Asst. Commissioner of Labour,
Nizamabad.
2. K.Veerendhar, S/o.Muralidhar,
R/o.H.No.3-3-85, Jandagalli, Nizamabad Proper.
3. G.Rangaiah, S/o.G.Chidambaram,
M/s.Goli Rangaiah & Bros, Shop No.46 Commission Agents,

Shradhanand Gunj. Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.No.64/2003 in W.C.No.92/2002 NF, on the file of the Commissioner for workmen's compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt.Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation Act and quash the same.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondents 2 and 3: None appeared

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WRIT PETITION NO : 7940 of 2004

Between:

The New India Assurance Co. Ltd.

Through its Br. Manager,
D.No. 2-11-90/1, 1st Floor, Opp: I.O.B.

Weekly Market Road, Kamareddy, Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. K. Sidda Ramulu, S/o. Bhoomaiah,
Bearing No. AAK 5547, C/o. Thirumala Trading Co. Gandhi

Gunj, Kamareddy, Nizamabad District.
3. G. Rajesham, S/o. Ganga Balaiah,
Bearing No. AAK 5547, C/o. Thirumala Trading Co. Gandhi

Gunj, Kamareddy, Nizamabad District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 23-10-2003, dismissing the I.A.No. 84/2003, in W.C. No. 119/1999 NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the respondents 2 and 3 : None appeared

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WRIT PETITION NO : 7941 of 2004

Between:

The New India Assurance Co. Ltd.,

through its Br. Manager, D. No. 2-11-90/1,
1st Floor, Opp: IOB Weekly Market Road, Kamareddy, Nizamabad

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour, Nizamabad
2. Smt. Menga Laxmi W/o Gangaram
   R/o Chikli (V), Maldoor (M) Nizamabad (District)
3. Mohd. Abdul Waisay S/o Mohd Abdul Lateef
   Beearing No. AP 25 T 4242 R/o H. NO. 9-20-62, Malapally,

Nizamabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003 dismissing the I.A. No. 71/2003 in W.C. No. 191/2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt Civil Hospital at Nizamabad, during at the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation act and quash the same as illegal and arbitrary

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Smt K.S.Mahender Reddy

Counsel for the Respondent No.3: None appeared

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WRIT PETITION NO : 7942 of 2004

Between:

The New India Assurance Co.ltd.,

through its Br.Manager, D.No.2-11-90/1,
1st Floor, Opp:I.O.B.Weekly Market Road, Kamareddy, Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmens' Compensation &

Asst.Commissioner of Labour, Nizamabad.
2. Kadam Prabhakar, s/o Ramuloo,
Occ:Labour on Lorry bearing No.AP 25 T 4242, r/o H.No.1-

24, Bandipoor (V), Dichpally (M), Nizamabad District.
3. Mohd.Abdul Waisay, s/o Mohd.Abdul Lateef,
Occ:Owner of lorry bearing No.AP 25 T 4242, r/o H.No.9-20-

62, Malapally, Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.No.70/2003 in W.C.No.190/2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad

filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt.Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Smt K.S.Mahender Reddy

Counsel for the Respondent no.3: None appeared

WRIT PETITION NO : 7943 of 2004

Between:

The New India Assurance Co. Ltd.,

Through Its Br. Manager, D.No.2-11-90/1,
1st Floor, Opp. I.O.B. Weekly, Market Road, Kamareddy,
NIZAMABAD.

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. Syed Ahmed, S/o. Wajid Ali,
R/o. Mirchi Compound, Old Market Office, Nizamabad.
3. Mohd. Abdul Waisay, S/o. Mohd. Abdul Lateef, Major,
R/o. H.No.9-20-62, Malapally, Nizambad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.No.74/2003

in W.C.No.194/2003 NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt. Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under provisions of Workmen's Compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Smt.K.S.Mahender Reddy

Counsel for the Respondent No.3: None appeared

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WRIT PETITION NO : 7945 of 2004

Between:

The New India Assurance Co. Ltd., Through Its Br. Manager
D.No.2-11-90/1, 1st Floor, Opp. I.O.B. Weekly
Market Road, Kamareddy, Nizamabad.

..... PETITIONER

AND

1.The Commissioner for Workmen's

Compensation & Asst. Commissioner of Labour, Nizamabad.
2. P. Srinivas Goud,@ Srinu, S/o. Shankaraiah Goud
R/o. Chinthakunta Village, Varni Mandal, Nizamabad District.
3. Pegari Gangaram, S/o. Not Known, Major,
R/o. Rakasipet Village, Bodhan Mandal, Malapally,

Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 23-10-2003, dismissing the I.A.No.85/2003 in W.C.No.91/1998 NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt. Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under provisions of Workmen's Compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondents 2 and 3: None appeared

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WRIT PETITION NO : 7946 of 2004

Between:

The New India Assurance Co. Ltd,

Through its Br. Manager, D.No. 2-11-90/1, 1st Floor,
Opp: I.O.B. Weekly Market Road, Kamareddy, Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmens' Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. Shaik Gaffar, s/o Shaik Shukur, r/o Gouthamnagar,

Nizamabad.
3. Mohd. Abdul Waisay, s/o Mohd. Abdul Latteef, Major,
r/o H.No. 9-20-62, Malapally, Nizamabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.NO. 76/2003 in W.C.No. 196/2003, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt. Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondents 2 and 3: None appeared

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WRIT PETITION NO : 7947 of 2004

Between:

The New India Assurance Co. Ltd.,

through its Br. Manager D. No. 2-11-90/1
1st Floor Opp: IOB weekly Market Road,

Kamareddy, Nizamabad

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation

& Asst. Commissioner of Labour Nizamabad
2. Shaik Baba S/o Shaik Yousuf
No. AP 16T4997 R/o Nehru Nagar, Ward No. 1

Sarangapoor Villllage Nizamabad District
3. G. Rangaiah S/o G.Chidambaram
M/s. Goli Rangaiah and Brothers, Shop No.46

Commission Agents, Shradhanand Gunj, Nizamabad-02

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003 dismissing the I.A. No. 62/2003 in W.C. No. 90/2003 NF on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent 2: Smt.K.S.Mahender Reddy

Counsel for the respondent No.3: None appeared

WRIT PETITION NO : 7948 of 2004

Between:

The New India Assurance Co.Ltd.

Through its Br. Manager D.No. 2-11-90/1,
Market Road, Kamareddy, Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. Hadwala Srinivas, S/o. Gangadhar Rao,
   bearing No. AP 16 T 4997, R.No. H.NO. 10-10-18, Bhoigalli,
   Nizamabad Proper
3. G. Rangaiah, S/o. G. Chidambaram,
   Shop No. 46, Commission Agents, Shradhanand Gunj.

Nizamabad - 503 002 (A.P.)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.No. 63/2003 in W.C. No. 91/2002 NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation

Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Smt.K.S.Mahender Reddy

Counsel for the RespondentNo.3: None appeared

WRIT PETITION NO : 7949 of 2004

Between:

The New India Assurance Co. Ltd,

Through its Br. Manager, D.No. 2-11-90/1,
1st Floor, Opp: I.O.B. Weekly Market Road,

Kamareddy, Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmens' Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. Abdul Wara, s/o Abdul Wahed,
R/o H.No. 9-2-10/1, Barkatpura Colony, Nizamabad Town.
3. Shaik Abdul Rahman, S/o Hyder Saab, Major,
R/o H.No. 7-11-23/5, Khoja Colony, Nizamabad Town.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records

relating to the order dated 17-10-2003, dismissing the I.A.NO. 69/2003 in W.C.No.166/2002NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt. Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Smt.K.S. Mahender Reddy

Counsel for the Respondent no.3: None appeared

WRIT PETITION NO : 7950 of 2004

Between:

The New India Assurance Co. Ltd,

Through its Br. Manager, D.No. 12-11-90/1,
1st Floor, Opp: I.O.B. Weekly Market Road, Kamareddy, Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour,Nizamabad.
2. Syed Sajid Ali, S/o Syed Qursheed Ali,
R/o H.No. 4-1-516, Achanpally (V), Bodhan (M), Nizamabad

District.

3. Abdul Lateef, s/o Moinuddin, Major,
R/o H.No. 4-1-186/A, Achanpally (V), Bodhan (M),

Nizamabad Distrrict.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 23-10-2003, dismissing the I.A.NO. 83/2003 in W.C.No. 4/2000NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt. Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondents 2 and 3: None appeared.

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W.P.No.7951 of 2004:

Between:

The New India Assurance Co. Ltd.,

Through its Br. Manager, D.No.2-11-90/1,
1st Floor, Opp. I.O.B. Weekly Market Road, Kamareddy,
Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. Abdul Rahman, S/o. Abdul Muqueesh,
   R/o. H.No.7-11-544, Isklampura, Bodhan Road, Nizamabad.
3. Mohd. Abdul Waisay, S/o.Mohd. Abdul Lateef,
   R/o. H.No.9-20-62, Malapally, Nizamabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.No.75/2003 in W.C.No.195/2003 NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt. Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under provisions of Workmen's Compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondents 2 : Smt.K.S.Mahender Reddy

Counsel for the respondent No.3: None appeared

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WRIT PETITION NO : 7952 of 2004

Between:

The New India Assurance Co. Ltd.,

Through its Br. Manager, D.No.2-11-90/1,
1st Floor, Opp: I.O.B. Weekly, Market Road, Kamareddy,
Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. Sontam Ramulu, S/o. Sontam Abbanna,
R/o. 1 Block 1/99, Makloor (V) & Mandal, Nizamabad

District.
3. G. Rangaiah, S/o. G. Chidambaram, Major,
M/s. Goli Rangaiah and Bros., Shop No. 46 Commission

Agents, Shradhanand Gunj, Nizamabad 503 003(A.P.)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.No.65/2003 in W.C.No.93/2002 NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt. Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under provisions of Workmen's Compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent 2: Smt. K.S.Mahender Reddy

Counsel for the Respondent No.3: None appeared

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WRIT PETITION NO : 7953 of 2004

Between:

The New India Assurance Co. ltd., Through its Br.Manager,
D.No.2-11-90/1 1st Floor, OPP: I.O.B.Weekly Market Road,
Kamareddy, Nizamabad

..... PETITIONER

AND

1. The Commissioner for Workmen's

Compensation Asst. Commissioner of labour
Nizamabad
2. R. Boja Rao S/o Gnaneshwar
Lorry No.AP 27T 6879 R/o Rampur Village
Malkoor(M) Nizamabad Dist
3. Shaik Abdul Rahman S/o Hyder Saab
R/o H.No. 7-11-23/5 Khoja colony, Nizamabad Town

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction especially one in the nature of Writ of Certiorari calling for records

relating to the order dt. 17/10/2003, dismissing the IA.No.68/2003 in WC.No. 165/2002NF., on the file of the Commissioner for workman's compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt Civil Hospital at Nizamabad,. during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the respondent No.1 GP for Labour

Counsel for the Respondent No.2: MR.RAMA RAO GANTA

Counsel for the respondent No.3: K.Venugopal Reddy

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WRIT PETITION NO : 7954 of 2004

Between:

The New India Assurance Co.Ltd., through its Br.Manager,
D.No.2-11-90/1, 1st Floor, Opp:I.O.B.Weekly,
Market Road, Kamareddy, Nizamabad.

..... PETITIONER

AND

1. The Commissioner for Workmen's Compensation & Asst.

Commissioner of Labour, Nizamabad.
2. Chakali Rajanna @ Angapatam Rajanna,

s/o Angapatnam Rajanna, Occ:Labourer, on

Lorry No.AP 25 T 4242 r/o Chikli (V), Maldoor (M),
Nizamabad District.
3. Mohd.Abdul Waisay, s/o Mohd.Abdul Lateef,

Occ:Owner of lorry bearing No.AP 25 T 4242, r/o H.No.9-20-62, Malapally, Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari calling for records relating to the order dated 17-10-2003, dismissing the I.A.No.73/2003 in W.C.No.193/2003NF, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nizamabad filed by the petitioner herein seeking to refer the 2nd respondent herein to the Medical Board, Govt.Civil Hospital at Nizamabad, during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of workmen's compensation Act and quash the same as illegal and arbitrary.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the respondents 2: Smt.K.S. Mahender Reddy

Counsel for the respondent No.3: None appeared

COMMON ORDER:

All these Writ Petitions are filed by the petitioner-New India Assurance Company Limited to issue a writ of certiorari calling for the records against the similar orders dated 17.10.2003 and 23.10.2003 made in different interlocutory applications in different Workmen’s Compensation Cases on the file of the Commissioner for Workmen’s Compensation and the Assistant Commissioner of Labour at Nizamabad seeking to set aside the same.

2. Heard the learned Counsel appearing for all the parties.

3. As the similar issues are involved, all the writ petitions are disposed of by a common order.

4. The petitioner-New India Assurance Company Ltd. filed petition under Section 11(1) of the Workmen's Compensation Act (for short 'the Act') to refer the claimant to the Medical Board, Nizamabad for medical examination and report. It is stated in the affidavit filed in support of the petition under Section 11(1) of the Act before the Commissioner for Workmen's Compensation that the claimants/injured sustained injuries in the alleged accident and were treated in the Government Hospital at Nizamabad and accordingly the medical certificates were filed in the court. The injured filed disability certificates issued by the same Doctor, who has treated the injured. The disability certificates issued by the Doctors were abnormal. Therefore, the Commissioner for Workmen's Compensation was requested to refer the injured to the medical board for examination and report, otherwise, the insurance company will be put to loss and hardship which cannot be compensated at a later stage. No counter was filed for the said petitions. The said petitions were filed by the Insurance Company to refer the claimants/injured to the Medical Board, Government Civil Hospital, Nizamabad for examination and report regarding the injuries, disability and loss of earning capacity. The Commissioner for Workmen's Compensation rejected the said applications by its orders dated 17.10.2003 and 23.10.2003 on the ground that according to Section 11 of the Act, 1923 read with Rule 13 (Part-IV) of the Workmen's Compensation Rules, 1953 a workman is not required to undergo medical examination by the Medical Board, but a qualified medical practitioner is competent to examine the workman. In the instant case, the workman was examined by a qualified medical practitioner and disability certificate was issued by him. Therefore, the Interlocatory Application filed by the counsel for opposite party

requesting for medical examination by Medical Board was not allowed and the I.A. was accordingly dismissed. Aggrieved by the said orders, these Writ Petitions have been filed by the insurance company.

5. Learned Counsel for the petitioner submits that the petitioner is the insurance company insurerer of the lorry in question. The person sustained injuries in the accident is said to have been working under the employment of owner and was travelling in the said lorry along with others. The lorry in question, which was driven in a rash and negligent manner, dashed another vehicle and the persons travelling in the lorry sustained grievous injuries all over the body. The injured persons filed different claim petitions before the Commissioner for Workmen's Compensation claiming different amounts towards the compensation for the alleged injuries said to have been caused to them, in the alleged accident. The said claims were contested by the insurance company on various grounds including as to their liability, nature of injuries, quantum of compensation and the relationship of employee and employer between the injured and the owner. During the trial, the insurance company filed an I.A. seeking to refer the injured person to the medical board at Nizamabad for medical examination and report in regard to the disability and loss of earning capacity. The said applications were dismissed on the ground that a qualified medical practitioner examined the injured and issued the disability certificates. It is stated that in the absence of any proper evidence from the claimants side, it is not open for the Commissioner for Workmen's Compensation to straightaway accept the version of the claimants and award compensation and necessarily it needs proper enquiry after giving opportunity to the contesting respondents including the insurance company and therefore, the said order, rejecting the applications filed by the insurance company is unsustainable and bad in law. It is necessary to have a proper medical evidence on record for assessing the grievousness of the

injury, the extent of the disability and also the loss of earning capacity of the injured in an enquiry for awarding compensation. It is appropriate on the part of the Commissioner for Workmen's Compensation to provide opportunity to both sides, so that he will have proper assistance in coming to a right conclusion. Denil such opportunity would not only deprives the opportunity to the party, but also smacks the very procedure as contemplated under the law. There is no reason to dismiss the I.A., more so, when the contesting respondents in the Workmen's Compensation seek to challenge the grievousness of the injuries and the extent of the disability as claimed by the claimants. There is no justification on the part of the Commissioner for Workmen's Compensation in holding that the qualified medical practitioner examined the injured and issued a disability certificate and therefore, there is no need to send the injured to the medical board. The contesting respondents are entitled to rebut the evidence adduced by the claimants and therefore, the workman needs to be sent to the Medical Board for medical examination. As a rebuttal evidence, in the process of enquiry to go into the claim of the compensation which is to be based on the nature of the injuries sustained, the extent of the disability sustained and the loss of earnings of the injured without which, it is not proper for the Commissioner to fix any quantum as such, therefore, the impugned order is illegal, unsustainable and contrary to law. It is also stated that the said order of the Commissioner for Workmen's Compensation is contrary to law laid down by this Court in ***UNITED INDIA INSURANCE COMPANY LIMITED, HYDERABAD v. MOHD. KHAJ RASOOL SAYYED @ MOHD. KHAJA MAIN SHAIK AND ANOTHER.*** It is further stated that if the injured is sent to the medical board, no inconvenience or discomfort or loss will be caused to the injured. Certain specific allegations have been made against Dr. L.Ramulu who has issued disability certificates to the applicants. It is stated that the said doctor is in the habit of issuing disability certificate to almost all the persons who file cases for compensation either before the Motor Accidents Claims Tribunal or before the Commissioner for Workmen's Compensation. For correct

assessment of the disability and loss of earning capacity of the injured, the Commissioner for Workmen's Compensation should have referred the injured to the medical board of the Government Hospital, Nizamabad.

6. On the other hand, the learned counsel appearing for the claimants/applicants filed a counter and contended that as per the Workmen's Compensation Act, if the victim is examined by any registered medical practitioner and produces the evidence before the Commissioner for Workmen's Compensation, it is sufficient to prove the disability and the loss of earning capacity. There is no mandatory provision in the Act that the victim must be referred to the medical board. The Writ Petitions are not maintainable and similar matters were already dismissed by this Court in C.R.P.No.3618 of 2002 dated 7.3.2003, W.P.No.18103 of 2002, dated 9.9.2002, C.R.P.No. 983 of 2003, dated 22.4.2004, C.R.P.No.5464 of 2002, dated 16.4.2004 and C.R.P.No.4395 of 2002, dated 18.12.2003. It is further stated that the proceedings before the Commissioner for Workmen's Compensation are summary in nature as held in **UNION OF INDIA v MRS T.R. VARMA**, AIR 2003 SC 674 which is contemplated in the Act and Rules, hence the strict proof of the Evidence Act and C.P.C. are not applicable as held in ***GOVERNMENT OF ANDHRA PRADESH v MRS K.PADMA RANIAND ANOTHER, G.SARAMMA AND OTHERS v. MD. JABBAR SHARIF AND ANOTHER*** and it is not a civil court to prove the contents as per the Evidence Act as held by the Apex Court in ***ASSOCIATED CEMENT CO. LTD. v P.N.SHARMA AND ANOTHER*** and hence, the Ruling 2003 (5) ALD 162 has no application to the facts and circumstances of the case. It is further stated that the Workmen's Compensation Act is a beneficial social-security legislation and if one view is advantageous to the victim, it alone has to be taken into consideration as held in ***UNITED INDIA INSURANCE COMPANY LTD. v PUSHPALAYA PRINTERS*** and the claims shall not be defeated on technicalities as held in ***SOHANLAL PASSI v P. SESHA REDDY AND OTHERS***. The

insurance company cannot make allegations against Dr.L. Ramulu without impleading him as a party. Hence, the allegations made against the doctor cannot be taken into consideration.

7. Before adverting to the rival contentions, it requires to be noticed the relevant provisions of the Workmen's Compensation Act and the Rules made there-under.

8. As per Section 3 of the Workmen's Compensation Act (for short 'the Act') that:

> *"if any personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of the Chapter II of the Act,1923.*

Provided that the employer shall not be so liable---

a. *in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding (three days).*

b. *In respect of any injury not resulting in death or permanent total disablement caused by an accident which is directly attributable to---*

iii. *the workman having been at the time thereof under the influence of drink or drugs, or*

i. *the willful disobedience of the workman t an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workman, or*

ii. *the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman."*

The obligation of the insurer is only to the extent of the liability of the employer covered by the insurance of the respective vehicle.

9. “Section 4 of the Act deals with:

> “*amount of compensation payable to the workmen in respect of the cases where death results from the injury, where permanent total disablement results from the injury and where permanent partial disablement results from the injury. In so far as the cases of death and permanent total disablement, the compensation payable is guided by Schedule IV taking into consideration the relevant factors. Where the permanent partial disability results from the injury in so far as the cases of the injury specified in paragraph 2 of the Schedule-I, such percentage of compensation which would have been payable in the case of permanent total disablement as is specified therein is being the percentage of the loss of earning capacity caused by that injury. But, in the cases of injury not specified in Schedule-I, such percentage of compensation payable in the case of permanent disablement as is proportionate to the loss of earning capacity as assessed by the qualified medical practitioner permanently caused by the injury.”*

10. A qualified medical practitioner is defined under Section 2(i) of the Act, which reads as follows:

> *“(i) QUALIFIED MEDICAL PRACTITIONER means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act.”*

Section 2(g) of the Act reads as follows:

> *“(g) ‘partial disablement’ means, where the disablement is of a temporary nature, such disablement as reduces the earning*

capacity of workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time."

Section 2(l) of the Act reads as follows:

"Total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement."

11. All the injuries, which are subject matter of these writ petitions falls under Section 4 (c) (ii) of the Act. Therefore, there are no guided principles to assess the quantum of compensation in cases of any injury falls under Section 4 (c) (ii) of the Act and therefore, the percentage of the compensation payable in the case of permanent total disability shall be in proportionate to the loss of earning capacity as assessed by the qualified medical practitioner.

12. Section 11 of the Act reads as follows:

"11. Medical Examination:- *(1) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time:*

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under Sub-section (1) or by the Commissioner at any time, refused to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitted himself.

Thus, Section 11 of the Act mandates to submit himself for medical examination by the workman for payment of the compensation.

13. The only question that arises for consideration is whether Section 4 (c) (ii) of the Act as regards the medical certificate issued by the qualified medical practitioner assessing the proportionate loss of earning capacity is rebuttal or not.

14. Rules 13 to 15 of Workmen's Compensation Rules, 1924 reads as follows:

"13. Workman not to be required to submit to medical examination save in accordance with rules:-

A workman who is required by sub-section (1) of Section 11 to submit himself for medical examination shall be bound to do so in accordance with the rules contained in this part and not otherwise.

"14. Examination when workman and medical practitioner both on premises:-

When such workman is present at the employer's premises, and the employer offers to have him examined

free of charge by a qualified medical practitioner who is so present, the workman shall submit himself for examination forthwith."

"15. Examination in other cases:- *In cases to which Rule 14 does not apply, the employer may-*

a. *send the medical practitioner to the place where the workman is residing for the time being in which case the workman shall submit himself for medical examination on being requested to do so by the medical practitioner, or*

b. *send to the workman an offer in writing to have him examined free of charge by a qualified medical practitioner in which case the workman shall submit himself for medical examination at the employer's premises or at such other place in the vicinity as is specified in such offer and at such time as is so specified:*

Provided that-

i. *the time so specified shall not, save with the express consent of the workman, be between the hours of 7 p.m and 6 a.m. and*

ii. *in cases where the workman's condition renders it impossible or inadvisable that he should leave the place where he is residing for the time being, he shall not be required to submit himself for medical examination save at such place."*

The workman who is receiving half of the monthly payment cannot be subjected to medical examination more than twice in the first month of the accident or more than once in any subsequent month. Where the

workman's right to compensation has been suspended under Sections 11(2) and 11(3) of the Act, the workman himself submits for examination subsequently entitling him for compensation.

15. No doubt, this Court in C.R.P.No.3618 of 2002 dated 7.3.2003 upheld such similar interlocutory orders of the Commissioner for Workmen's Compensation on the ground that the insurance company was at liberty to cross-examine the Doctor who issued the medical certificate and confirmed it with regard to its genuineness, validity and legality of the said certificate and it is also open for the insurance company to contend that the said Doctor who issued the medical certificate is not competent to issue the same. Following the earlier decision of this Court in C.R.P.No.3972 of 2002, dated 17.2.2003, the said C.R.P.3618 of 2002 was dismissed holding that as the statute does not require that the workmen should be subjected to medical examination before the medical board at the instance of the insurance company. Followed by the said judgment, another C.R.P.No.4395 of 2002 was also dismissed on 16.4.2004.

16. But, contrary to the said judgments, the learned counsel for the writ petitioners placed reliance on the judgment of this Court in C.M.A.Nos.489, 904, 1145 and 1760 of 1999 and W.P.No.1249 of 2003, dated 23.6.2003 reported in 2003(5) ALD 162 cited supra. In the said judgment, the learned Hon'ble Sri Justice B. Prakash Rao, considering the relevant provisions of the Motor Vehicles Act, Code of Civil Procedure, and the Evidence Act dealt with a similar question. It was noticed that during the trial, similar interlocutory applications were filed seeking to allow the company's doctor to be examined as witness and for enquiry in a claim filed for compensation under the provisions of the Compensation Act. But the said interlocutory applications were dismissed. Questioning the said order, W.P.No.1249 of 2003 was filed to quash the said interlocutory applications and to issue consequential directions. The said

interlocutory applications were filed seeking to examine its doctor and the same were dismissed mainly on the ground that there is no provision under the Workmen's Compensation Act for referring the matter to the medical board and therefore, the doctor need not be examined and it was also held that the applications were filed with a view to dragging on the proceedings. Questioning the said orders, the said W.P. was filed. The learned Judge held that under the provisions of the Evidence Act, a distinction has been made between private and public document. The learned Judge held in paragraph 29 as follows:

> *"Sub-section (3) of Section 169 of the Act says that subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry. Chapter XI of the A.P. Motor Vehicles Rules,1989 (for short ' the Rules' deals with the establishment of Claims Tribunals and the procedure in regard to the applications filed. Under Rule 455 of the Rules an application for compensation made under Section 166 of the Act shall be made in Form CID and shall be accompanied by the fee prescribed therefore in Rule 475. Sub-section (3) of Section 169 of the Act and Rule 467 of the rules, contemplate that the Claims Tribunal, if it thinks fit, co-opt one or more persons possessing special knowledge with respect to any matter relevant to the inquiry and that the remuneration to be paid to the person or persons co-opted shall be determined by the Claims Tribunal, Rule 473 contemplates that the provisions of Order V Rules 9 to 13 and 15 to 30, Order IX , Order XIII, Rules 3 to 10, Order XXVIII Rules 1 to 3 C.P.C. shall apply to the proceedings before the Claims Tribunal. The proviso to Rule 465 contemplates that the evidence of any medical witness shall be taken down as nearly as may be, word for word. In the main rule thereof, it states that the examination of witnesses has to be made in a brief memorandum of the substance of the evidence of each witness. Thus from the above, it is quite evident that necessarily, the Claims Tribunal shall endeavour to see that the persons possessing special knowledge, which is on par and the opinions of experts are appointed for the purpose of assisting the Tribunal. However, it is informed across the Bar by both the sides that no such appointments have been made so far and no steps are taken in this regard. In view of the large number of accidents and pendency of number*

of cases before the respective Tribunals, this Court takes serious note of the lapse on the part of the concerned for not taking any such steps and making appointments expertise of persons having special knowledge, especially on medical side. In the absence of any such facility, it follows that the claimants have to produce medical evidence to prove and substantiate the nature of injuries, their grievousness and the disability sustained by them. Under the provisions of the Evidence Act a distinction has been made between private and public documents. Section74 of the Evidence Act defines a public document and the mode of proof thereof. Section 75 of the Evidence Act defines that all other documents other than those defined under Section 74 are private documents. Section 61 of the evidence Act provides that the contents of the document have to be proved by primary or secondary evidence and Section 64 of the Act says that the documents must be proved by primary evidence except in the case as provided in the Act. Therefore, any document produced by any of the parties to the lis necessarily requires to be proved in the manner as provided under the Evidence Act. In most of these cases, the claimants are producing certificates and discharge cards etc. issued by the doctors and hospitals and also the bills in regard to the expenses incurred by them which require to be proved in the manner as provided under the Evidence Act. Mere marking of documents through the claimants does not amount to proof of the said documents as held in the decision reported in1971 S.C. 1856. In most of these cases, no serious attempt is made to produce the necessary competent witnesses. It is urged on behalf of the claimants that once such certificates and the bills etc. issued by the doctors, it is not necessary to examine them. Such contention cannot be accepted as there is no distinction between medical evidence or other evidence in a Court of law as per the provisions of the Evidence Act. The said contention on behalf of the claimants is to be rejected on the fact of it. Therefore, necessarily it has to be held that in the absence of any evidence in proof of the documents through proper witnesses, the documents produced cannot be accepted nor can be relied on by the Court. Further, the medical evidence falls within expert evidence as contemplated under Section 45 of the Evidence Act. In the absence of expert's evidence, any amount of other evidence either oral or documentary is of no legal value. Even in an enquiry before the Commissioner under the provisions of the Workman's Compensation Act, no distinction can be drawn in regard to the proof. Therefore, even in an enquiry before the Commissioner, the evidence is required in proof of the documents filed in regard to the

grievousness of the injuries or the extent of disability."

In paragraph 36, the learned Judge also held as follows:

> *"In W.P.No. 1249 of 2003 the Tribunal sought to reject the application filed by the petitioner for examining their company's panel doctor during the enquiry. In view of the reasoning given in the preceding paragraphs, it is necessary to have the proper medical evidence on record for assessing the grievousness of the injuries and also the extent of disability in an enquiry for compensation. Further, it is proper to provide an opportunity to both the sides so that the Court will have proper assistance incoming to a right conclusion. Denying any such opportunity would not only deprives the opportunity to a party and also smacks the very procedure as contemplated under the law. There is absolutely no reason to reject any such application more so when contesting respondent seeks to challenge the grievousness of the injuries and the extent of disability as claimed by the claimant. It is also not correct on the part of the Tribunal to hold that there is no such provision to call for any such evidence. Any such steps is a rebuttal in the process of enquiry to go into the claim for compensation which has to be based on the nature of injuries sustained and extent of disability sustained, without which it is not proper for the Court to fix any quantum as such. In view of the same, the Writ petition is allowed and the application in I.A.No.28 of 2002 in W.C. No.84 of 2002 on the file of the Assistant Commissioner of Labour, Hyderabad II is allowed. The Tribunal shall proceed with the enquiry after giving an opportunity to both the parties to adduce their evidence and dispose of the matter on merits in accordance with law."*

17. A perusal of the aforesaid judgment of this Court shows that rejection of such applications filed to have the proper medical evidence on record for assessing the grievousness of the injuries and the extent of the disability in an enquiry for compensation is unsustainable. It is proper to provide an opportunity to both sides so

that the Court will have a proper assistance in coming to a right conclusion. Denial such opportunity would not only deprives the opportunity to a party but also smacks the very procedure as contemplated under the law.

18. In the instant case also there is absolutely no reason to reject the said applications more so, when the contesting respondents seek to challenge the grievousness of the injuries and the extent of the disability as claimed by the claimants. In view of the aforesaid authoritative judgment, I am not in acceptance of my view taken earlier in C.R.P.No.3618 of 2002,dated 07.03.2003 and I am of the same opinion as that of my learned brother Justice B.Prakash Rao, as held in the aforesaid case. Therefore, I am of the opinion that the Commissioner for Workmen's Compensation is not justified in rejecting the said applications of the petitioners. It is open for the insurance company to take such a step as to adduce rebuttal evidence in the process of enquiry to go into the claim for compensation, which has to be based on the nature of injuries sustained and extent of disability sustained, without which it is not proper for the court to fix any quantum as such.

19. The learned Counsel appearing for the petitioner relied on a decision of this Court in the case of **CHARAN SINGH v G.VITTAL REDDY AND ANOTHER**. But the said judgment goes against the contention of the learned counsel for the workmen. To appreciate the contention of the learned counsel for the petitioner, Paragraphs 13 to 15 of the judgment are relevant which are extracted below:

> *"13. It is also pertinent to state that the Workmen's Compensation Act is a beneficial piece of legislation conceived in the interest of the workmen, who are the victims of accidents arising out of an in the course of employment and the Act provides for cheaper and quicker disposal relating to compensation through Special Tribunals. The procedure as contemplated under part-V of the Act and the Rules framed*

thereunder are summary in nature. The Commissioner while passing the Orders shall record concisely a judgment, giving findings on each issue and reasons for such finding. Under Schedule-I, a legal fiction is created by the Legislature wherein injuries referred to in the said Schedule are deemed to result in permanent disablement vis-à-vis the percentage of loss of earning capacity. Thus, the statute itself simplified the process of calculation of loss of earning capacity with reference to the scheduled injuries. While, in case of non-scheduled injuries resulting in permanent partial or total disablement, the assessment by qualified Medical Practitioner is necessary as required under Section 4(C) (ii) of the Act. The words "Qualified Medical Practitioner" is also defined under Section 2(1)(i) which means "any person registered under any Central Act, Provincial Act or any Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purpose of this Act."

"14. Thus, when the Section is very clear and specific regarding the assessment to be made by a qualified medical practitioner should be one, who has treated the injured workman. A provision in a beneficial piece of legislation has to be interpreted in such a way as to assure the benefit and not to deny the benefit that is sought to be conferred by statute. Thus, if Section 4 is read with reference to Schedule-I, the inevitable conclusion is that in case of non-scheduled injuries is that in case of non-scheduled injuries, the percentage of total disablement as is proportionate to the loss of earning capacity has to be assessed by the qualified medical practitioner and it is not necessary that the Doctor, who treated the workman should be the only assessing authority. It is also not in dispute that the doctor, who was examined before the Commissioner fell within the definition of qualified medical practitioner."

15. Under those circumstances, we are of the considered view that Section 4(1) (C) does not stipulate a requirement of assessment by the medical practitioner who had treated the workmen concerned at the first instance. It is always open for the qualified medical practitioner to assess the loss of disability vis-à-vis loss of earning capacity with reference t the injuries

sustained by him and if the employer of the Insurance Company was not satisfied with the assessment made by the medical practitioner, whose evidence was produced contra evidence ought to have been adduced by the insurance company to rebut or impeach the evidence of the medical officer adduced on behalf of the workmen. In the absence of such evidence, we cannot find fault with the order of the learned Commissioner."

20. Therefore, in view of the aforesaid judgments, I am of the opinion that it is open for the insurance company to produce contra evidence to rebut or impeach the evidence of the certificates issued by the registered medical practitioner for the workmen.

21. The Writ Petitions are squarely covered by the judgment of this Court in W.P.No.1249 of 2003 which view was in conformity with the judgment of the Division Bench of this Court reported in 2003(4) ALD 183 (DB) cited supra. For the aforesaid reasons, I am of the opinion that the impugned orders of the Commissioner for Workmen's Compensation are unsustainable and they are liable to be set aside.

22. Accordingly, the Writ Petitions are allowed. There shall be no order as to costs.

_____

V. ESWARAIAH,J

Dated: 28-10-2004,

ccm

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Devinder Gupta, the Chief Justice on this the Twenty Eighth day of October, Two Thousand and Four.

ASSISTANT REGISRAR

One fair copy to the Honourable Sri Justice E.Eswaraiah (for his Lordships Kind perusal).

To

1. The Commissioner for Workmen's Compensation & Assistant

Commissioner of Labour, Nizamabad.
2. 2 CCs to GP for Labour, High Court Buildings, Hyderabad

(OUT)

3. 8 L.R. copies.

4. The Secretary, Union of India, Ministry of Law, Justice

and Company Affairs, New Delhi.

5. The Secretary, A.P. Advocates Association Library, High

Court Building, Hyderabad.

6. 2 CD copies.